IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.10631 OF 2004**

Mercury Paints & Varnishes Ltd. ... Petitioner

V/s.

Mumbai Mazdoor Sabha ... Respondent

Mr.S.C. Naidu with Shailesh Pathak i/b T.R. Yadav for Petitioner
Mr.C.U. Singh i/b S.Udeshi for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 28, 2005**

**P.C.:**

. This Petition challenges the order of the Industrial Court dated 30.8.2003 in Complaint (ULP) No.879 of 1997. Aggrieved by this order of the Industrial Court allowing the complaint, the Petitioners filed Review Application (ULP) No.36 of 2003 which has been disallowed by order dated 14.7.2004. Although both these orders are impugned in the Petition, Mr.Naidu, appearing for the Petitioners, restricts the challenge to the order in complaint (ULP) No.879 of 1997 dated 30.8.2003. This obviously is because, prima facie, the review application is not maintainable under the MRTU & PULP Act for reviewing the final order passed in a Complaint.

2. The main contention of the Petitioner is that the so-called agreement dated 6.10.1995, which is sought

to be implemented by the Respondent-Union by filing a complaint under Item 9 of Schedule IV, is not an agreement within the eyes of law. It is not a settlement under section 2(p) of the Industrial Disputes Act nor is it an agreement under the Indian Contract Act because the parties were not at *idem* when the document dated 6.10.1995 was signed. According to the learned Counsel for the Petitioner, the earlier settlement in respect of the general demands was pending and had not been terminated. Therefore, there was no question of demanding any interim relief for the employer to concede to such a demand. It is submitted that the entire dispute related only to bonus for the year 1993-94 and not to the grant of interim relief pending the general demands. It is then submitted that the signatories to the document of 6.10.1995 on behalf of the company are not authorised and, therefore, this could not be a valid agreement in the eyes of law. Reliance is placed on the judgment of this Court in the case of *Shetkari Sahakari Sakhar Karkhana Ltd. v/s. S.B. Shete, Presiding Officer, First Labour Court, Solapur & Ors.,* **1998 II LLJ 477.**

3. Mr.Singh, appearing for the Respondent, submits that the earlier settlement is terminated in August 1991. A fresh charter of demands was submitted in May 1994 and it is during the pendency of a decision on the

charter of demands that the company had agreed to pay interim relief besides paying bonus for 1993-94. He submits that the document relied on by the Union is an agreement as the parties who had signed the document were well aware of the contents. Mr.D.M. Telang who was the Works Manager had signed the understanding without demur.

4. The evidence on record indicates that the submissions made on behalf of the Union have been accepted by the Industrial Court. Mr.Telang was examined for the Company. He has admitted that the earlier agreement was terminated in August 1991 and that the Union had sent a charter of demands in May 1994. However, this witness has not stated anywhere that he was not authorised to take any decision in respect of granting interim relief. Mr.Telang has deposed as under in his cross-examination:

> 9. It is correct to say that after signing Exh.U-13 i.e., dt.06.10.95, the bonus and ex-gratia payment was paid to the workers as contended therein. It is correct to say that the letter dt.16.10.95 now shown to me i.e., Exh.C-7 the same is received by the respondent Co. It is correct to say that after receipt of the said letter i.e., Exh. C-7 I used to visit the office of the complainant union as usual. It is correct to say that I submitted the letter to the union that I was authorised to visit the office of the complainant union by the respondent company, and the same was submitted to the complainant union prior to 6th Oct., 1995. <u>It is also true to say that after issuing authority letter till signing of the document at</u>

> Exh.U-13, I have not informed the complainant union or by the respondent company that I was not authorised to discuss and sign the financial matters. (Emphasis supplied).

5. There is no document on record nor is there any pleading to the effect that Mr.Telang was not authorised to take any decision or that there was no board resolution authorising Mr.Telang to take such a decision. In my view, therefore, the Industrial Court cannot be faulted for having accepted the submissions made on behalf of the respondent-union. The reliance placed by Mr.Singh in the case of *Hindustan Times Ltd., New Delhi v/s. Their Workman,* **AIR 1963 SC 1332** is apt. The Supreme Court has observed that industrial adjudication must be careful not to encourage bad faith on the part of the workman or the employer. The Industrial Court has drawn from the documentary and oral evidence on record that the Company had indeed agreed to pay Rs.400/- as interim relief pending finalisation of general demands. The Union had agreed by subsequent correspondence to postpone the interim relief to a further date. Not having complied with these conditions, the Union has filed the complaint which has been allowed by the Industrial Court.

6. I see no reason to differ from this view taken by the Industrial Court. Hence, Petition is rejected.